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In the Supreme Court of the United States

October Term, 1952.

No. 539

HARRY BYERS AND BYERS TRANSPORTATION COMPANY, INC.,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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Counsel for the petitioners, Harry Byers and Byers Transportation Company, Inc., pray that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Eighth Circuit entered in this case.

OPINIONS BELOW.

The material portions of the facts and the conclusions of law (R. 35-39) of the Tax Court of the United States are reported in a Memorandum Opinion at 10 T. C. M. 200, and the opinion of the United States Circuit Court

of Appeals for the Eighth Circuit (R. 83-89) is not yet reported.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on October 29, 1952 (R. 89-90), and an order granting a stay of the issuance of the mandate until January 10, 1953, was entered in the United States Circuit Court of Appeals for the Eighth Circuit on December 30, 1952.

QUESTIONS PRESENTED.

Whether the income of a partnership known as the P & C Company was income to the Byers Transportation Company, Inc., and, secondly, whether such income was a distribution substantially equivalent to a dividend to Harry Byers, a stockholder in the Byers Transportation Company, Inc.

STATUTE INVOLVED.

The pertinent statutory provision, Section 22(a) of the Internal Revenue Code is set forth in the Appendix, *infra*.

STATEMENT.

This petition relates to the Federal income tax liabilities of Harry Byers, individual, for the calendar years 1943 to 1946, inclusive, and for the Byers Transportation Company, Inc., a corporation, for the calendar years 1942 to 1946, inclusive.

This petition is based upon the petitioners' claim of improper treatment for income tax purposes by the Commissioner of Internal Revenue of the net profits of the P & C Company, a partnership. It was held that the net income to the partnership was income to the petitioner, Byers Transportation Company, Inc., and that such income was also taxable income to the petitioner, Harry Byers.

The opinion of the United States Circuit Court of Appeals for the Eighth Circuit affirmed a decision of the Tax Court of the United States, asserting the affirmative of both propositions.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In holding that the income of the P & C Company was income to the Byers Transportation Company, Inc.

2. That such income was also taxable income to Harry Byers, individual.

3. In affirming the judgment of the Tax Court of the United States.

4. In failing, in any event, to reverse the judgment of the Tax Court of the United States, insofar as it related to the petitioner, Harry Byers.

REASONS FOR GRANTING THE WRIT.

The court erroneously applied the principles enunciated in *Helvering* v. *Horst,* 311 U. S. 112, which said principles have absolutely no bearing on the issues before that court and, secondly, the opinion is in conflict with the opinion of this Court in the case of *Culbertson* v. *Commissioner,* 337 U. S. 733. A writ of certiorari should be granted in the instant case.

CONCLUSION.

The petition should be granted.

Respectfully submitted,

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APPENDIX.

SECTION 22. GROSS INCOME.

"(a) General Definition.—'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *"